# Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of	
Assessment and Collection of Regulatory Fees for Fiscal Year 2013	MD Docket No. 13-140
Procedures for Assessment and Collection of Regulatory Fees;	MD Docket No. 12-201
Assessment and Collection of Regulatory Fees for Fiscal Year 2008	MD Docket No. 08-65

# **COMMENTS OF AT&T**

AT&T Services, Inc., on its own behalf and on behalf of its affiliates, (AT&T) files these comments in response to the Commission's *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (FY 2013 F/NPRM)* issued in this docket.<sup>1</sup>

In its July 2012 Notice of Proposed Rulemaking, the Commission articulated three overarching goals: "fairness, administrability, and sustainability." In its comments, AT&T agreed with the Commission that these were appropriate goals but emphasized that, in addition to complying with the statute, the chief hallmark of any regulatory fee program should be fairness. Administrability and sustainability, while worthy goals, take a backseat to fairness. This remains the case today.

That said, we recognize that the Commission had a difficult task in achieving fairness. From our reading of the *FY13 F/NPRM*, it is clear, however, that the Commission was duly conscious of this obligation and has endeavored to arrive at a fair and balance approach to

<sup>&</sup>lt;sup>1</sup> Assessment and Collection of Regulatory Fees for Fiscal Year 2013; etc., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 13-74 (rel. May 23, 2013) (FY 2013 F/NPRM).

<sup>&</sup>lt;sup>2</sup> Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Notice of Proposed Rulemaking, FCC 12-77 paras. 13-17 (rel. July 17, 2012) (FY 2012 NPRM).

<sup>&</sup>lt;sup>3</sup> See Comments of AT&T Inc. at 2 (Sept. 17, 2012).

assessing fees. In this spirit, we add the following comments in hopes of furthering the goal of fairness.

### A. Reallocation of FTEs

We support using updated 2012 FTE calculations because the 1998 FTE data do not fairly and accurately reflect the time that Commission employees devote to the activities of the core bureaus. Using data from September 30, 2012, is a far cry better than continuing to rely on the 1998 FTE data, which has distorted the regulatory fee scheme for over a decade. The Commission proposes to avoid the stark result of simply updating FTE data by also reallocating the International Bureau (IB) FTEs and by capping any rate increase resulting from the reallocation to 7.5%. One proposal may have more merit than the other.

A fair and thorough review of the work of the IB and an allocation of FTEs based on it, in theory, could produce a fairer distribution of FTEs among the core bureaus. It is difficult to determine from the Commission's description in the FY 2013 F/NPRM whether the present proposal actually produces that result. Assuming for the sake of argument, however, that it does, what does a 7.5% cap on fee increases accomplish? Said another way, because the interstate telecommunications service providers (ITSPs) have been over paying regulatory fees for more than a decade, the Commission should take this inequity into account, as well, and seek to rectify that injustice sooner and not later. A cap on rate increases would seem totally unnecessary if the Commission has in fact fairly accounted for FTE distribution among the core bureaus.

Along this line, however, the Commission needs to commit to regular and frequent FTE data updates. The Commission shouldn't allow the data to grow stale and distort the regulatory fee scheme. In AT&T's 2012 comments, we proposed that the FTE data be updated no less frequently than once every five years.<sup>6</sup> Certainly, five years would be the outer most limit given

<sup>&</sup>lt;sup>4</sup> FY 2013 F/NPRM para. 8.

<sup>&</sup>lt;sup>5</sup> *Id.* paras. 20 - 30.

<sup>&</sup>lt;sup>6</sup> 2012 Comments of AT&T at 4.

the rapid changes in both the marketplace and in technology—changes which directly impact the regulatory work of the Commission's bureaus.

## **B.** Combining ITSPs and Wireless Telecommunications Services

We have grave concerns about combining wireless and wireline telecommunications services into one category for fee-assessment purposes. While it is true that these services share some similarities and issues, it is equally true that they each have unique regulatory concerns, as well. Without going into detail, the assertion that the two services "encompass similar regulatory policies and programs" is a misleading generalization. While both include voice services and have some similar obligations (*e.g.*, access to emergency services, CALEA, and universal service fees), they provide services in significantly different ways, which translates into different regulatory issues—such as, tariffing and pricing requirements (price cap or rate of return), accounting regulations, section 251(b) obligations, and the like for wireline telecommunications service providers; and spectrum auctions, pole siting rules, 9-1-1 location accuracy measurements, radio frequency regulations, and the like for CMRS providers. On top of that, they have two separate core bureaus addressing those concerns. We believe that it is at least premature to combine these services into one category, especially for FY 2014.

In addition to the differences in these services, the existing mechanism for assessing the fees differs, too. ITSPs use end-user revenue to calculate the fee based on FCC Form 499-A; CMRS providers, on the other hand, use number of subscribers. Were the Commission to combine these services for fee calculation purposes, it shouldn't be a foregone conclusion that wireless ought to migrate to a revenue-based calculation, as is proposed in FY 2013 F/NPRM.<sup>7</sup> There ought to be a full vetting of which basis should be used to calculate the fee. For example, it might be as fair or even fairer to rely on the number of Assigned Numbers reported by providers in the numbering resource utilization and forecast (NRUF) reports, which are required

<sup>&</sup>lt;sup>7</sup> FY 2013 F/NPRM para. 12.

to be filed by current Commission rules twice a year. <sup>8</sup> It is not a given that revenues are the only way to assess regulatory fees.

A proper reallocation of direct and indirect FTEs should go a long way to address the present imbalance in the existing fee-assessment scheme. It is not necessary at this time to combine the ITSP and CMRS categories in order to make it a fairer system. And should the Commission decide in the future that combining these services for fee assessment purposes makes sense—which is not the case today—the Commission should not assume that the best or only way to calculate a fee would be to use revenue.

## C. Inclusion of IPTV

The Commission seeks comments on whether Internet Protocol TV (IPTV) is "sufficiently similar to cable services to be included in the same regulatory fee category and to be assessed regulatory fees in the same manner." If the Commission is inclined to assess regulatory fees on IPTV, it must avoid inadvertently pigeonholing IPTV into the historic "Cable TV System" regulatory fee classification. Because IP technology allows for new and innovative methods of delivering video content to subscribers and enables new competitors to enter the market, pigeonholing IPTV in the "Cable TV System" slot will cause confusion going forward as the video market evolves. Congress established multichannel video programming distributors (MVPDs) as a broader category of video content distribution providers that also

<sup>&</sup>lt;sup>8</sup> Some concern has been raised in certain quarters that using telephone numbers as a method of assessing fees and the like isn't sufficiently "future proof." It may be that telephone numbers as we presently know them will some day disappear but there will always be some subscriber-specific number used by providers to route communications and bill for services. If, in the distant future, telephone numbers are displaced by alternative identifiers, these future identifiers would in all likelihood be just as useful for calculating regulatory fees as today's telephone numbers. Part of any regular re-assessment of FTE data could just as easily include an update on the use of telephone numbers among the regulated fee payors.

<sup>&</sup>lt;sup>9</sup> FY 2013 F/NPRM, para. 37.

<sup>&</sup>lt;sup>10</sup> We have repeatedly and consistently maintained that AT&T's IPTV offering (AT&T's U-verse TV) is not a cable service. *See* for example Letter from James C. Smith, Senior Vice President, SBC Services, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket 04-36 (Sept. 14, 2005).

includes providers of cable TV systems.<sup>11</sup> In our mind, this broader MVPD category is more appropriate as a regulatory fee category because it could encompass both cable service and non-cable-service video offerings, like IPTV, and allow for evolution in the MVPD market.<sup>12</sup>

AT&T's U-verse TV service is an IP-based MVPD service, and not a "cable service." <sup>13</sup> If the Commission concludes that it is necessary to revamp its regulatory fee collection process to include IPTV, it should be done in a fashion that reflects the evolving dynamic nature of the MVPD video marketplace, and not confuse all MVPD services with cable service. To this end, the Commission should either establish a single "MVPD" fee category that would encompass all MVPDs (including cable operators) or establish a separate MVPD fee category for non-cable-service MVPDs.

In either case, the Commission should harmonize its fee collection scheme across all MVPDs. Collecting regulatory fees on a per-subscriber basis is one such approach. Where an MVPD provides multiple services, any such per-subscriber fee should reflect subscription to the MVPD video service provided. Subscriber fees in an MVPD fee category must exclude subscription to other services that an MVPD may provide that do not constitute an MVPD service.

### AT&T

By: /s/ William A. Brown

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<sup>&</sup>lt;sup>11</sup> 47 U.S.C. § 522(13).

<sup>&</sup>lt;sup>12</sup> In this regard, the Commission has sought comment on how to interpret the term MVPD in the context of evolving technology and the provision of multichannel video services over broadband connections. *See Public Notice* DA 12-507, MB Docket 12-83 (March 30, 2012).

<sup>&</sup>lt;sup>13</sup> 47 U.S.C. §522 (6).

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